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[Ed. Note.—For other definitions, see Words and Phrases, vol. 8, pp. 6819-6821.]

4. Same—"Cancel."—The word "cancel" as used in a codicil directing cancellation of certain debts owing by legatees to testatrix, implied a forgiveness and obliteration of the debt, and excluded the idea of payment.

[Ed. Note.—For other definitions, see Words and Phrases, vol. 1, pp. 949-951.]

DICE et al. v. SHERMAN.

Nov. 21, 1907.

[59 S. E. 388.]

1. Eminent Domain—Public Use—How Determined.—When the power of eminent domain is invoked, it must be made clearly to appear that the property sought to be condemned is useful to the public, and the existence or nonexistence of a public use in any given case must be determined by the court.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 18, Eminent Domain, §§ 51, 525.]

2. Same—Proceedings—Petition—Sufficiency—Taking Property for Private Use—Constitutional Provisions.—Code 1904, § 1347, provides that a person having, upon lands owned by him on a water course, or proposing to build on such lands, a water mill, or other manufactory, etc., useful to the public, and desiring leave to erect a dam across such water course, etc., may apply for such leave to the circuit court, etc. Held, that a petition for leave to erect a dam on a creek for the purpose of securing power to operate "a public cider mill and the machinery of a certain public telephone exchange" then on land owned by petitioner, and praying for condemnation of certain land, did not show that the purpose for which the property was sought to be taken was for a public use, and a judgment of condemnation based on such petition was a taking of private property for a private purpose and unauthorized by the Constitution.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 18, Eminent Domain, § 512.]